

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:)	
)	
Harrington Creations, LLC)	Case Number: 2014-SW-28011
d/b/a Harrington Brass Works)	
(faucets))	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: October 15, 2014

Number of alleged violations:	Total: 4847 (832 noncompliant units and 4,015 model-days for failure to certify compliance (11 basic models, 365 days not certified))
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Maximum possible assessment:	\$970,400
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Proposed civil penalty:	\$368,150
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The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges Harrington Creations, LLC d/b/a Harrington Brass Works (“Harrington”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 430.

Specifically, DOE alleges:

1. A faucet, including a kitchen faucet, is a “covered product,” 42 U.S.C §§ 6292(16) and 6291(31)(E).
2. Effective January 1, 1994, each kitchen faucet manufactured and distributed in commerce in the United States must have a maximum flow rate no greater than 2.2 gallons per minute. 10 C.F.R. § 430.32(o).
3. Harrington has manufactured¹ and distributed in commerce in the United States a kitchen faucet basic model containing part numbers 20-210 and 20-211.
4. This Harrington faucet basic model is not in conformity with the applicable water conservation standard.

¹ “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(10).

5. Since January 13, 2010, Harrington distributed in commerce in the United States at least 832 units of this basic model that did not meet the applicable water conservation standard.
6. A showerhead, including a hand-held showerhead, is a “covered product,” 42 U.S.C §§ 6292(15) and 6291(31)(D); 10 C.F.R. §430.2.
7. Harrington has manufactured faucets including basic models containing part numbers 20-212, 31-111, 32-110, 33-111, 04-100, 12-100, 20-200, and 31-200.
8. Harrington has manufactured showerheads including basic models containing part numbers 04-301, 12-406, and 20-360.
9. For at least 365 days, Harrington has distributed, and continues to distribute, the basic models containing part numbers 20-212, 31-111, 32-110, 33-111, 04-100, 12-100, 20-200, 31-200, 04-301, 12-406, and 20-360 in commerce in the U.S.
10. The basic models containing part numbers 20-212, 31-111, 32-110, 33-111, 04-100, 12-100, 20-200, 31-200, 04-301, 12-406, and 20-360 are “covered products.” *See* 42 U.S.C §§ 6292(15), 6292(16), 6291(31)(D), and 6291(31)(E); 10 C.F.R. § 430.2.
11. Harrington failed to submit a certification report for the basic models containing part numbers 20-212, 31-111, 32-110, 33-111, 04-100, 12-100, 20-200, 31-200, 04-301, 12-406, and 20-360 before distributing these basic models in commerce in the U.S., as required by 10 C.F.R. §§ 429.12, 429.28 and 429.29.

The following information is provided in question and answer format to help explain Harrington’s legal obligations and options.

What do I do now?

DOE is offering to settle this enforcement action if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the Compromise Agreement, which includes paying the fine within thirty (30) days of the date of an Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (\$970,400). You have other options as described below.

What are my other options?

If you do **not** agree to DOE’s settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (“ALJ”) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an

order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the lowest penalty. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: christina.studt@hq.doe.gov
By fax to: (202) 586-3274
By private carrier to: Christina Studt
Trial Attorney (GC-32)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

What should I include in my response?

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

How did DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$200 per unit for 832 units distributed in commerce in the United States. DOE is not pursuing potential violations in 2009 at this time. If the case goes to hearing, this number would be adjusted to include violations before 2010 and any additional information obtained.

Federal law also sets a maximum civil penalty for each day you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each basic model before distributing the basic model in U.S. commerce. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted a valid certification report. In the maximum penalty calculation in this Notice, DOE assumes that each basic model has been in distribution in commerce in the United States for at least 365 days. The maximum penalty is \$200 per basic model per day. 10 C.F.R. § 429.120.

If you have any questions, please contact Christina Studt by phone at (202) 586-0389 or email at christina.studt@hq.doe.gov.

Issued by:

_____/S/_____
Laura L. Barhydt
Assistant General Counsel for
Enforcement